

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

City of Bainbridge Island  
Wyckoff/Eagle Harbor Site  
Phase III Acquisition Area

AGREED ORDER

No. DE \_\_\_\_\_

TO: City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, WA 98110-1812

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Exhibit A:	Option Agreement – City of Bainbridge Island/The Trust for Public Land
Exhibit B:	Site Diagram and Legal Description
Exhibit C:	Wyckoff/PSR – Bainbridge Island Prospective Purchaser Agreement
Exhibit D:	Ecology Letter to City of Bainbridge Island, August 2, 2002
Exhibit E:	Park Vision and Design Framework
Exhibit F:	Schedule for Work
Exhibit G:	Required Permits

## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Bainbridge Island (City) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City to take remedial actions that are not in conflict with the U. S. Environmental Protection Agency (EPA) site remedy through the development of the Pritchard Park Remediation and Redevelopment Plan, as specified in Section VII of this Order, in the redevelopment of contaminated land in Bainbridge Island, Washington for Park Use and Development Activities as defined in Section IV of this Order. The actions required by this Order are separate from the EPA Remedy for the site, except to the extent they address operation and maintenance obligations assumed by Ecology under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The Trust For Public Land (TPL), working as a facilitator, negotiated an Option Agreement (OA) dated May 14, 2003 with the City, as amended (Exhibit A) under which the City may purchase, in successive and discrete phases, approximately 49.5 acres of the Wyckoff-Eagle Harbor Superfund Site (the Property) in the years 2004-2006, or portions thereof consistent with the OA. TPL negotiated a separate purchase option agreement with Pacific Sound Resources (PSR) Environmental Trust, dated April 11, 2003, in which TPL's goal was to simultaneously reconvey the Property to the extent acquired by TPL pursuant to the OA to the City for Park Use and Development Activities. PSR consented that the City may join as a party thereto and directly purchase the Property or portions thereof, in accordance with the PSR/TPL

purchase agreement, without TPL. The sale to the City of the phase subject to this Order (Phase III, or the Site), as described in Exhibit B took place on February 27, 2006.

The City and the U.S. Environmental Protection Agency (EPA) negotiated a Prospective Purchaser Agreement dated December 8, 2004 (EPA/PSR – Bainbridge Island Prospective Purchaser Agreement), which provided the City with a Covenant Not to Sue from the United States under CERCLA, 42 U.S.C. §9601 et seq., attached as Exhibit C.

It shall be the City's responsibility to ensure that any remedial actions undertaken pursuant to this Order do not conflict with the EPA Remedy. Development and maintenance of the Park on the Site in accordance with the City's plan is intended to partially fulfill operation and maintenance obligations to be assumed by Ecology under CERCLA. In addition, under an Intergovernmental Cost Reimbursement/Funding Agreement that may be negotiated with Ecology, the City may implement additional operation and maintenance activities for operating and maintaining the integrity of the EPA Remedy otherwise obligated to Ecology under CERCLA. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

## **III. PARTIES BOUND**

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. The City agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City's responsibility under this Order. The City shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure

that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

#### IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site is referred to as the Wyckoff/Eagle Harbor Superfund Site, Phase III Acquisition Area (Site) and is generally located on the southeastern shore of Bainbridge Island. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in Exhibit B to this Order, which includes a detailed Site diagram and legal description. The Site constitutes a Facility under RCW 70.105D.020(4).

2. Parties: Refers to the State of Washington, Department of Ecology and the City of Bainbridge Island.

3. PLP: Refers to the City of Bainbridge Island.

4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to the Order.

5. Park Management, Park Upkeep and Compliance Monitoring shall mean performance of management activities related to operation of the park.

6. Park Use and Development Activities shall mean park use, development and construction, including but not limited to the following activities:

a. Visitor and interpretation centers for the former Wyckoff site, and public art or outdoor interpretation structures.

b. Accessory park buildings, roadways, parking lots, trails and pathways, picnic areas, and related recreational uses.

7. Additional Operation and Maintenance – EPA Remedy shall mean the performance of operations and maintenance activities for operating and maintaining the integrity of the EPA Remedy otherwise obligated to Ecology under CERCLA.

8. Successors in Interest and Assign or successors and assigns shall mean any person who acquires an interest in the Site simultaneous and/or subsequent to the City acquiring an interest in the Site, through purchase, lease, transfer, assignment, or otherwise, and includes the Bainbridge Island Metropolitan Park and Recreation District (BIMPRD), a duly constituted municipality, and/or the National Park Service of the United States (NPS).

## **V. FINDINGS OF FACT**

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the City:

1. Pacific Sound Resources' approximately 49.5-acre former wood treating facility is on the southeastern shoreline of Eagle Harbor on Bainbridge Island, Washington, a municipality. The facility has been divided into four operable units for EPA administrative purposes, which are being remediated as the EPA Wyckoff/Eagle Harbor Superfund Site which was listed on the National Priorities List (NPL) on July 22, 1987, at 52 Federal Register 27620. Of the four operable units (OU), three occur within the Property owned by the City, and a portion of these three units are within the Site addressed by this Order. These include:

a. The East Harbor OU 1. A containment capping remedy was selected for the sediments in the East Eagle Harbor area in 1992 (amended in December 1995). The remedy was implemented in phases; the last phase (Phase III) was completed in 2002. At least 10 years of monitoring is to be conducted to ensure the integrity of the remedy. A portion of the East Harbor OU 1 is within the tidelands of the Site.

b. Wyckoff Soil OU 2. A Record of Decision (ROD) was issued in 2000 that addresses remedy selection for the upland soils. Studies and engineering design are being completed to address soil remediation for OU 2 including the Former Process Area. A portion of

the Wyckoff Soil OU 2 including the eastern portion of the Former Log Storage/Peeler Area is within the Site.

c. Wyckoff Groundwater OU 4. The ROD issued in 2000 addresses remedy selection for the upland groundwater. A portion of the Wyckoff Groundwater OU 4 is within the Site.

2. Wood treating operations at the facility under various owners date back nearly a hundred years. The Wyckoff Company, a closely held Washington corporation, owned and operated the facility from December 1965 until operations ceased in 1994. In 1991, The Wyckoff Company changed its name to PSR, which is The Wyckoff Company's successor in every respect.

3. In August 1994, the United States entered a Consent Decree in the United States District Court for the Western District of Washington, Seattle Division under which the principals of PSR were released from personal liability in exchange for the transfer of all shares of PSR to the PSR Environmental Trust, an entity created by the Decree to liquidate all PSR assets for the benefit of EPA and CERCLA Natural Resource Trustees.

4. EPA has performed numerous investigations of the Site beginning in 1991 and continuing to the date of this Order. Investigations representative of the current conditions (but by no means inclusive of the many studies and design reports completed by EPA and its subcontractors) include:

a. CH2M Hill, 1997. Remedial Investigation Report, for the Wyckoff Soil and Groundwater Operable Units, Wyckoff/Eagle Harbor Superfund Site, Bainbridge Island, Washington, June 13, 1997.

b. USACOE, 2000. Comprehensive Report, Wyckoff NAPL Field Exploration, Soil and Groundwater Operable Units, Wyckoff/Eagle Harbor Superfund Site, Bainbridge Island, Washington, May 2000.

c. USACOE, 2002. Wyckoff/Eagle Harbor East Beach Investigation Report, Wyckoff/Eagle Harbor Superfund Site, Bainbridge Island, Washington, May 1, 2002.

d. EPA, 2002. Five-Year Review Report. Wyckoff/Eagle Harbor Superfund Site, Bainbridge Island, Washington, September 2002.

e. Striplin Environmental Associates and USACOE, 2003. 2002-2003 Year 8 Environmental Monitoring Report, Wyckoff/Eagle Harbor Superfund Site, East Harbor Operable Unit, Bainbridge Island, Washington, Draft, August 29, 2003.

These reports confirm that environmental media at the upland and intertidal area of the Site contain concentrations of hazardous substances above applicable MTCA cleanup levels, and characterize the upland area of the Site adequately to indicate the need for cleanup activities. The upland area of the Site includes the designated redevelopment areas for Park Use and Development Activities.

5. Contaminants of concern in groundwater and soils at the Property are chemicals from wood treatment processes, primarily creosote-derived polycyclic aromatic hydrocarbons, pentachlorophenol, aromatic carrier oils, and dioxin/furans.

6. In accordance with CERCLA, 42 U.S.C. §9601 et seq., and associated EPA/Ecology agreed roles and responsibilities for the Wyckoff/Eagle Harbor Superfund Site, EPA is developing and will implement a response action at the Site to address protection of human health and the environment (EPA Remedy). Ecology is responsible for a portion of the EPA Remedy cost and all long-term operation and maintenance associated with the EPA Remedy as described in the Ecology letter to the City dated August 2, 2002, Exhibit D. The EPA Remedy is summarized in the Record of Decision and any subsequent ROD Amendment(s), for the Wyckoff/Eagle Harbor Superfund Site, Soil and Groundwater Operable Units, Bainbridge Island, Washington, February 2000.

7. The EPA remedial action objective for the Property is the removal and treatment or disposal of contaminants to the extent practicable, and/or containment thereof. The EPA Remedy may require the implementation of an operation and maintenance program (Section VII.e) to ensure/maintain the integrity of the remedy.

8. The City is a duly constituted municipality under the laws of the State of Washington.

9. The City has conducted land use planning under Ch. 36.70A RCW, and the Site is designated Water-Dependent Industrial, by the Bainbridge Island Comprehensive Plan. The Site has been used for industrial purposes and is currently vacant and is zoned W-DI, Water-Dependent Industrial.

10. The City intends to facilitate the redevelopment of the Site for Park Use and Development Activities consistent with applicable City of Bainbridge Island comprehensive plan designations and zoning regulations as those designations may be revised.

11. The City has prepared a planning document, entitled Park Vision and Design Framework, attached as Exhibit E. The document describes the park vision and design concepts, development constraints, and design review milestones.

## **VI. ECOLOGY DETERMINATIONS**

1. The City is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4).

2. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

3. Based upon its purchase of the Site for Park Remediation and Development Activities, Ecology issued a potentially liable person status letter to the City dated May 3, 2006, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated May 17, 2006, the City voluntarily waived its rights to notice and comment and accepted Ecology's determination that the City is a potentially liable person (PLP) under RCW 70.105D.040.

4. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require the City to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order in association with Park Use and Development Activities are in the public interest.



## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. The City agrees to perform work at the Site by undertaking certain remedial actions consisting of construction, redevelopment, and maintenance of the Park. It shall be the City's responsibility to ensure that any remedial actions undertaken pursuant to this Order do not conflict with the EPA Remedy at the site. This work will facilitate the redevelopment of designated areas of the Site for park use in accordance with the Park Vision and Design Framework (Exhibit E) consistent with the City's zoning and comprehensive plan designations for the Site. The objectives of the work are to ensure that Park design, construction, and use are not in conflict with the EPA Remedy, and that Park Management, Park Upkeep and Compliance Monitoring will ensure the integrity of the EPA Remedy is maintained at the Site.

2. The City agrees to implement the remedial actions at the Site in accordance with the Scope of Work and the Schedule of Work set forth herein.

3. Scope of Work. The Scope of Work includes development of a Pritchard Park Remediation and Redevelopment Plan (PPRRP) which will include park design, park development, and Park Management, Park Upkeep and Compliance Monitoring. As neither the EPA Remedy nor the park design is finalized on the Effective Date of this Order, the Scope of Work for the PPRRP provides a list of plan elements, as summarized below. These plan elements are intended to be protective of health and the environment. It is also intended that these elements not conflict with, and be protective of, the integrity of the EPA Remedy. The PPRRP will be implemented in phases through a series of sub plans and Engineering Design Reports developed in conjunction with the park development engineering documents. Each phase will relate to Park Concept Areas as described in the Park Vision and Design Framework (Exhibit E). For the Wyckoff/Eagle Harbor Superfund Site, the Park Vision and Design Framework divided the Property into nine Park Concept Areas consisting of five upland zones (Japanese/American Memorial and West Hillside, Ravine, East Hillside, Flatlands, and The

Point) and four beach zones (Water Access Beach, Habitat Beach, West Beach, and East Beach). Of these nine Concept Areas, five Park Concept Areas – the East Beach, The Point, a portion of the West Beach, a portion of the Flatlands, and a portion of the East Hillside are within the Site. The City shall submit sub plans for these five concept areas to Ecology for review and approval.

a. Cover and Capping Sub Plan. The PPRRP will address cover and capping elements for specific areas of the site consistent with the Park Vision and Design Framework and the timing of site redevelopment. It is intended that cover and capping will not be in conflict with the EPA Remedy. It is anticipated that cover and capping elements will be initially developed for the East Hillside, Flatlands, and West Beach areas as they will be the first to be redeveloped. After EPA completion of the EPA Remedy and prior to Site redevelopment, cover and capping elements may be developed for The Point and East Beach as appropriate.

Cover and capping elements shall address any need for secondary covers over areas where the EPA Remedy includes a cover or cap over residual contamination exceeding MTCA unrestricted land use soil cleanup levels as defined by WAC 173-340-100; and/or areas where residual contamination may exist at depth. Secondary cover alternatives may include, but are not limited to, soil, landscaping materials, pavement, improved trails, foundation pads, and marker beds such as high visibility materials or excavation barriers like quarry spalls.

b. Excavation Management Sub Plan. Excavation management involves the management of excavations to protect human health and the environment and to maintain the EPA Remedy during redevelopment of the Park or routine maintenance of the Park. This sub plan shall provide standard operating procedures to the City/Park personnel and contractors to ensure workers are informed of the site hazards and that the EPA Remedy is not altered, modified, or removed. This sub plan also shall provide standard operating procedures to workers when encountering excavations with obvious signs of unexpected contamination. Excavated soil shall be characterized and managed according to this sub plan. Unexpected contaminated soils shall be disposed of consistent with WAC 173-340-700 and methods of transportation and disposal specified in this sub plan.

c. Worker Health and Safety Sub Plan. This sub plan shall provide guidance to ensure site workers are protected from potentially hazardous conditions that could be encountered on the Site during Site development. The sub plan shall be consistent with WAC 173-340-810.

d. Park Management, Park Upkeep and Compliance Monitoring Sub Plan. This sub plan shall detail any park management, park upkeep, and compliance monitoring activities for park operation. Examples of park management activities include inspection of the secondary protective covers and caps, stormwater quality monitoring as required by applicable permits, and inspection and maintenance of institutional controls.

e. Best Management Practices Sub Plan. The PPRRP and any subsequent Engineering Design Reports shall define the Best Management Practices (BMPs) that will be implemented during both redevelopment construction and subsequent Park operations. For the redevelopment phase of the project, the sub plan shall address temporary erosion control, construction stormwater control and treatment, grading, and soil management. For park operations, the sub plan shall address stormwater grading/drainage/treatment requirements, care and maintenance of lawn and landscape areas, and maintenance of impervious surfaces.

f. Institutional Controls Sub Plan. Following completion of the EPA Remedy and PPRRP tasks, the City shall develop administrative requirements to be placed on activities, access, or exposure to soil or groundwater at the Site. Planned institutional controls shall include recorded restrictive covenant(s), public signage, security, groundwater use restriction, land use restrictions, and access control. Inspection and maintenance of the Institutional Controls are detailed in the Park Management, Park Upkeep and Compliance Monitoring Sub Plan. The Institutional Controls shall be maintained until concentrations of hazardous substances in the soil and groundwater are at such levels as to allow for unlimited use and unrestricted exposure. The sub plan shall be consistent with WAC 173-340-440.

g. Additional Operation and Maintenance – EPA Remedy Sub Plan (Optional). Under an Intergovernmental Cost Reimbursement/Funding Agreement that may be negotiated with Ecology, the City may implement additional operation and maintenance

activities for operating and maintaining the integrity of the EPA Remedy otherwise obligated to Ecology under CERCLA. The purpose of the Ecology/City Intergovernmental Agreement would be to minimize the overall cost of onsite operation and maintenance activities through the use of local personnel. Prospective tasks may include water level monitoring, contaminant monitoring in groundwater, site security, and operations of any on-site process systems. The City and Ecology will coordinate to develop the Additional Operation and Maintenance – EPA Remedy Sub Plan.

4. Schedule of Work. The City agrees to submit the sub plans, engineering design reports, park development engineering documents, and plans and specifications for the Site to Ecology for review and approval in accordance with the Schedule of Work attached as Exhibit F.

5. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable. Prior to such action, the Designated Project Coordinators shall confer in an effort to resolve the problems in deliverables.

## **VIII. TERMS AND CONDITIONS OF ORDER**

### **A. Public Notices**

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

### **B. Remedial Action Costs**

The City shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of the Order. The City shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of

costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, the City shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Chung Ki Yee  
Department of Ecology  
Toxics Cleanup Program  
300 Desmond Drive  
Lacey, WA 98503

The project coordinator for the City is:

Libby Hudson, Division Manager  
Long Range Planning  
City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, WA 98110-1812

The project coordinators shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the City, and all documents, including reports, approvals, and other correspondence concerning the activities

performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators.

Ecology and the City may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. The City shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

Any construction work performed pursuant to the Order shall be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as provided in RCW 18.43.130.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the City either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the City's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the City. The City shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the City unless an emergency prevents such notice. All persons who access the Site pursuant

to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access.

**G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the City shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the City shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by the City pursuant to implementation of this Order. The City shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by the City or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F of this Order, Ecology shall notify the City prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

**H. Public Participation**

Ecology shall maintain the responsibility for public participation at the Site. However, the City shall cooperate with Ecology, and shall:

1. Develop a plan identifying when and how public involvement will occur throughout the development of the PPRRP. If agreed to by Ecology, the City shall develop appropriate mailing lists, prepare drafts of public notices and fact sheets at important stages of

the remedial action, such as the Park development submission for plans associated with the PPRRP, e.g. engineering design elements with incorporated protection of the EPA Remedy into park design, park management, park upkeep and compliance monitoring, or for a shoreline substantial development permit. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

2. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify the City prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the City that do not receive prior Ecology approval, the City shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- (a) City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, WA 98110-1812
- (b) Department of Ecology  
Toxics Cleanup Program  
300 Desmond Drive  
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents,



and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, the City shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the City shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

(a) Upon receipt of the Ecology project coordinator's decision or the itemized billing statement, the City has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision or itemized statement.

(b) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(c) The City may then request Ecology management review of the decision. This request shall be submitted in writing to the Ecology Toxics Cleanup Program Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of the City's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. The request shall specify:

- (a) The deadline that is sought to be extended;
- (b) The length of the extension sought;
- (c) The reason(s) for the extension; and
- (d) Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the City to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:

- (a) Circumstances beyond the reasonable control and despite the due diligence of the City including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the City; or
- (b) Delays by EPA in implementing the EPA Remedy which preclude completion of elements of Work to be Performed as described in Section VII of this Order; or
- (c) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- (d) Endangerment as described in Section VIII.M of this Order.

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the City.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the City written notification in a timely fashion of any extensions granted pursuant to the Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- (a) Delays in the issuance of a necessary permit which was applied for in a timely manner;
- (b) Other circumstances deemed exceptional or extraordinary by Ecology; or
- (c) Endangerment as described in Section VIII.M of this Order.

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N of this Order, substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the City. The City shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J of this Order.

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the City to cease such activities for such period of time as it deems necessary to abate the danger. The City shall immediately comply with such direction.

If, for any reason, the City determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the City may cease such activities. The City shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the City shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the City's cessation of activities, it may direct the City to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the City's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the City to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the City regarding remedial actions required by this Order, provided the City complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions

necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the City without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the City's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the City shall provide a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the City shall notify Ecology of said transfer. Upon transfer of any interest, the City shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the City pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. A list of the required permits known at the time of entry of this Order has been included in Exhibit G.

2. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, Defendant shall comply with the substantive requirements of such permits or approvals. A list of such permits and approvals and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order, have been included in Exhibit G.

The City has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial

action under this Order. In the event either Ecology or the City determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the City shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the City and on how the City must meet those requirements. Ecology shall inform the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

3. Pursuant to RCW 70.105D.090(2) in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and the City shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**Q. Restrictive Covenants**

The City agrees to record a Restrictive Covenant with the office of the Kitsap County Auditor within ten (10) days of the completion of the remedial action. The Restrictive Covenant shall restrict future uses of the Site. The City will provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

R. Periodic Review

As remedial action, including ground water monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, the City shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

S. Indemnification

The City agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of the City, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon the City's receipt of written notification from Ecology that the City has completed the remedial activity required by this Order, as amended by any modifications, and that the City has complied with all other provisions of this Agreed Order. Ecology may review information pertaining to individual Park Concept Areas submitted by the City, and, in its sole discretion, may issue the City a letter finding that one or more of the requirements of this Order as specified in Section VII of this Order have been

completed in regard to a given Park Concept Area. Such a letter and finding would not diminish the City's liability for the overall site, or affect the provisions of section VIII N. of this Order.

## **X. ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
  2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
  3. In the event the City refuses, without sufficient cause, to comply with any term of this Order, the City will be liable for:
    - (a) Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
    - (b) Civil penalties of up to \$25,000 per day for each day it refuses to comply.
  4. This Order is not appealable to the Washington Pollution Control Hearings Board.
- This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: \_\_\_\_\_

The City of Bainbridge Island

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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The Honorable Darlene Kordonowy  
Mayor of the City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, WA 98110-1812  
206-842-2545

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Tim Nord  
Manager, Land & Aquatic Lands Cleanup  
Toxics Cleanup Program  
PO Box 47600  
Olympia, WA 98504-7600  
360-407-7226



## **Exhibit A**

### **Option Agreement City of Bainbridge Island/The Trust for Public Land**

## OPTION AGREEMENT

This is an Agreement dated as of May 14, 2003, between the City of Bainbridge Island, a political subdivision of the State of Washington ("Buyer"), and The Trust for Public Land, a California nonprofit public benefit corporation ("Seller").

### RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

#### BUYER:

The City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, Washington 98110  
Attn: City Clerk  
Tel: (206) 842-2545  
FAX: (206) 780-8600

#### SELLER:

The Trust for Public Land  
1011 Western Avenue, Suite 605  
Seattle, WA 98104  
Attn: Kent Whitehead / Tom Tyner  
Tel: (206) 587-2447  
FAX: (206) 382-3414

B. Seller holds a valid and enforceable option to purchase that certain real property located in Bainbridge Island, Kitsap County, Washington, described on Exhibit A attached to this Agreement and hereby incorporated by this reference, which property is generally known as the "Wyckoff site". A true and correct copy of a Memorandum of Seller's option is attached hereto as Exhibit B and incorporated by this reference. Said real property, is comprised of fifty (50) acres, more or less, together with any and all improvements, fixtures, timber, water and minerals located thereon and any and all rights appurtenant thereto, including but not limited to all timber rights, water rights, grazing rights, access rights and mineral rights to be owned or acquired by Seller pursuant to Seller's option, (the real property and all rights appurtenant thereto are collectively called the "Subject Property.")

C. It is the mutual goal and intention of Seller and Buyer that the Subject Property be preserved and used eventually for public, open space and recreational purposes. Towards

this end, Seller desires to sell its rights to the Subject Property, and Buyer desires to buy Seller's rights to the Subject Property, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Option. In consideration of the payment by Buyer to Seller of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller grants and conveys to Buyer an exclusive and irrevocable option to purchase the Subject Property on the terms and conditions set forth in this Agreement (the "Option"), subject to the satisfaction of the conditions precedent set forth in Paragraph 5 below. In granting this Option, Seller expressly promises and agrees that: (i) if Seller purchases from the current owner any portion or all of the Subject Property prior to Buyer's exercise of the Option pursuant to Paragraph 5 below, Seller shall sell the Subject Property pursuant to the terms and conditions set forth in this Agreement; or (ii) if Seller is not the owner of the Subject Property at the time Buyer exercises any part of the Option, as set forth in Paragraph 5 below, Seller shall exercise Seller's rights under Seller's option to purchase the Subject Property, and shall undertake all reasonable means necessary to facilitate Buyer's purchase of the Subject Property, or any portion thereof, from Seller pursuant to the terms of this Agreement, including, but not limited to facilitating a direct deed, if deemed appropriate by the parties.

2. Term. The Option shall be effective as of the mutual execution date of the Agreement (the "Effective Date"); provided, that Buyer shall pay to Seller an creditable but nonrefundable Option consideration of \$25,000.00 on or before December 1, 2003 and, unless extended by Buyer pursuant to the terms herein, shall expire on June 29, 2004 (the "Initial Option Term").

2.1 Extension of Initial Option Term. On or before June 29, 2004, Buyer, at Buyer's option, may exercise the Option as to the entire Subject Property or as to at least a mutually-agreeable portion of the Subject property, to be determined by the parties at a later date, pursuant to the terms set forth in Paragraph 4 below. Closing of the purchase and sale of the Subject Property for which the option is exercised pursuant to this Paragraph 2.1 shall occur not later than December 31, 2004.

Provided that Buyer has exercised the Option with respect to at least a mutually-acceptable portion of the Subject Property (as set forth above), Buyer, at Buyer's option, may extend this Option as to the remainder portion of the Subject Property past the Initial Option Term by notifying Seller in writing of Buyer's election to extend the Initial Option Term as to the remainder Subject Property and by paying to Seller the creditable but nonrefundable additional Option consideration in the amount of Twenty Five Thousand Dollars (\$25,000.00) on or before December 1, 2004. Upon Buyer's satisfaction of the contingencies set forth

herein, the Initial Option Term shall be extended through June 29, 2005 (the "First Extended Option Term").

2.2 Extension of First Extended Option Term. On or before June 29, 2005, Buyer, at Buyer's sole option, may exercise this Option as to the entire remainder Subject Property or as to at least a mutually-agreeable portion of the remainder Subject property, to be determined by the parties at a later date, pursuant to the terms set forth in Paragraph 4 below. Closing of the purchase and sale of the Subject Property for which the Option is exercised pursuant to this Paragraph 2.2 shall occur not later than December 31, 2005.

Provided that Buyer has exercised the Option with respect to at least a mutually-acceptable portion of the remainder Subject Property (as set forth above), Buyer, at Buyer's option, may extend this Option as to the remainder portion of the Subject Property past the First Extended Option Term by notifying Seller in writing of Buyer's election to extend the First Extended Option Term as to the remainder Subject Property on or before December 1, 2005. Upon Buyer's satisfaction of the notice contingency set forth herein, the First Extended Option Term shall be extended through June 29, 2006 (the "Second Extended Option Term"). If Buyer extends the First Extended Option Term as provided herein, Buyer shall have until June 29, 2006 to exercise the Option to purchase the total remaining Subject Property. If Buyer exercises the Option as set forth herein, closing of the purchase and sale of the remainder Subject Property shall occur no later than December 31, 2006.

3. Exercise. In the event Buyer elects to exercise the Option or any portion thereof, it shall do so by: (i) notifying Seller in writing within the term specified in Paragraph 2 above, and (ii) upon Buyer's first exercise of the Option (if exercised in phases) by paying to Seller the sum of Two Hundred Thousand Dollars (\$200,000.00) as an earnest money deposit to be applied toward the Purchase Price of the Subject Property for which the Option is exercised. Such notice and payment shall be deemed timely if it is received by Seller by facsimile transmission or by mail, first class postage prepaid, or delivered personally by courier or Express Mail to Seller within the term specified in Paragraph 2. If the Option is exercised in phases, no additional earnest money deposit shall be required as a condition to Buyer's purchase of any of the remainder Subject Property.

4. Purchase Terms.

(a) Price. In the event that Buyer exercises the Option in accordance with the terms of this Agreement, Seller shall sell to Buyer, or shall cause the current owner of the Subject Property to convey to Buyer, and Buyer shall buy from Seller, the Subject Property for a total purchase price of Eight Million Dollars (\$8,000,000.00).

(b) Method of Payment. The Purchase Price shall be payable in cash on the close of escrow.

(c) Purchase in Phases. Buyer may purchase the entire Subject Property, or Buyer may purchase some or all of the Subject Property in one or more phases. The configuration and sequence of each phase of the purchase must be mutually agreeable to both Buyer and Seller. If Buyer elects to purchase the Subject Property in more than one phase, then the Purchase Price for each phase shall be calculated based on the value of the various parcels making up the Subject Property as set forth in the appraisal of the Subject Property performed by Anthony C. Gibbons of ReSolve, which appraisal has been approved by both Buyer and Seller ("the Appraisal"). If Buyer elects to purchase the Subject Property in one or more phases, then all references in this Agreement to the terms "Subject Property" and "Purchase Price" shall be deemed to be references to the applicable phase of the Subject Property as the context requires.

If Buyer elects to purchase the Subject Property in more than one phase, then after December 31, 2004, the appraisal establishing the fair market value of the Subject Property performed by Anthony C. Gibbons of ReSolve shall be updated for any purchase beyond the first purchase phase, and the Purchase Price for the remaining portions of the Subject Property adjusted to reflect any change in value of the remaining portions of the Subject Property. Provided, however, that for any portion of the Subject Property that is purchased in phases after December 31, 2004, if the appraised value is higher than the Seller's agreed upon purchase price for the same Subject Property with the current owner pursuant to Seller's option, then Seller shall sell the Subject Property for the Seller's agreed upon price with the current owner. If the revised appraised value of such Subject Property is less than Seller's agreed upon purchase price for the same Subject Property with the current owner pursuant to Seller's option, then the parties shall endeavor to renegotiate the Purchase Price in good faith.

In the event that this Agreement terminates due to a failure of any of the contingencies set forth herein (other than as a result of Buyer's breach of this Agreement), or is otherwise terminated by either party in accordance with the provisions of this Agreement, any earnest money deposit paid by Buyer, and any accrued interest thereon, shall be returned to Buyer, in total, without recourse.

In the event of Buyer's breach of this Agreement, Seller's sole recourse against Buyer shall be the payment to Seller of the earnest money deposit paid by Buyer. In the event of Seller's breach of this Agreement, Buyer shall have all remedies against Seller available at law or in equity, including but not limited to specific performance.

5. Escrow and Closing: Conditions Precedent to Seller's Obligation to Convey the Subject Property to Buyer. Upon Buyer's exercise of the Option, or at any earlier time as may be convenient, the parties shall open an escrow with a title company acceptable to Buyer and Seller to serve as the escrow holder (the "Escrow Holder"), for the purpose of closing the purchase and sale of the Subject Property. Escrow on the first phase of the purchase of the Subject Property shall close no event later than December 31, 2004. Closing on subsequent phases of the purchase shall close no later than December 31 of each succeeding year until the entire Subject Property has been conveyed or this Agreement has terminated,

whichever comes first. Seller's obligation to convey the Subject Property to Buyer is contingent on satisfaction of the following conditions precedent:

(a) Buyer's timely notification to Seller of Buyer's intention to exercise the Option and purchase the Subject Property within the time frame set forth in this Agreement;

(b) Seller's ability to obtain good and marketable title to the Subject Property following exercise of Seller's option with the current owner of the Subject Property. If Buyer exercises the Option in accordance with this Agreement, Seller will exercise its option with the current owner to acquire the Subject Property, and will proceed in good faith and with due diligence to complete the acquisition of the Subject Property from its current owner in order to be in a position to convey good and marketable title to Buyer, or, alternatively Seller will use all reasonable and best efforts to facilitate a direct transfer from the current owner to Buyer, in accordance with the terms and conditions set forth herein.

6. Title. Seller shall convey the Subject Property to Buyer or to Buyer's designee, or shall cause the current owner of the Subject Property to convey the Subject Property to Buyer by a statutory warranty deed subject only to (a) a lien for nondelinquent real property taxes; and (b) any other matters approved by Buyer in writing.

7. Title Insurance. Seller shall provide Buyer with a standard coverage owner's policy of title insurance, in form and substance acceptable to Buyer, in the amount of the Purchase Price insuring that title to the Subject Property is vested in Buyer upon close of escrow subject only to the exceptions noted in Paragraph 6 above.

8. Seller's Preclosing Covenants. Seller shall not, without the prior written consent of Buyer, which consent will not be unreasonably withheld, (a) make, extend or permit, or knowingly permit the current owner of the Subject Property to make, extend or permit any leases, contracts, mortgages or other liens or encumbrances affecting the Subject Property which will not be removed, released or terminated at closing, or (b) take or permit any action, or knowingly allow the current owner of the Subject Property to take or permit any action that could materially reduce the value of the Subject Property.

9. Seller's Representations. Both Buyer and Seller acknowledge that the Subject Property is involved in an active environmental remediation under the auspices of the U.S. Environmental Protection Agency (the "EPA"). In addition to such rights and responsibilities pertaining to the EPA, Seller makes the following representations and warranties:

(a) Seller has full power and authority to enter into this Agreement, and, at or prior to closing, will have full power and authority to transfer and convey all right, title and interest in and to the Subject Property in accordance with this Agreement, either directly or by having the current owner of the Subject Property convey title directly to Buyer or Buyer's designee.

(b) Within Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property, or pending or threatened against Seller which could affect Seller's interest in the Subject Property, affect the value of the Subject Property, or subject an owner of the Subject Property to liability, other than the acknowledge EPA clean-up.

(c) Within Seller's knowledge, there is no lease, license, permit, option, right of first refusal or other agreement, which affects the Subject Property or any portion thereof which will not be removed at closing, other than the acknowledge EPA clean-up.

(e) Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which the Subject Property is subject.

Each of the above representations and warranties is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the close of escrow, Buyer may elect to terminate this Agreement, in which case Buyer shall have no obligation to purchase the Subject Property.

10. Remedies Upon Default. In the event either party defaults in the performance of its obligations under this Agreement, the non-defaulting party shall have all remedies provided by law or equity.

11. Right to Inspect Subject Property. During the term of this Agreement Buyer through its employees and agents may enter upon the Subject Property for the purpose of making inspections and investigations as Buyer deems appropriate, including, without limitation, performing a Phase I environmental site assessment of the soils and waters on the Subject Property. All tests or inspections shall be at Buyer's expense, and Buyer shall indemnify and hold Seller harmless from and against any and all costs, claims or damages incurred or suffered by Buyer, its agents or employees, in performing such tests or inspections. Buyer will notify Seller in advance if and when it plans to conduct any inspection or investigations on the Subject Property, and to the extent reasonably possible, will schedule such investigation or inspection at a time that is convenient and agreeable to Seller.

12. Prorations and Fees. Real property taxes on the Subject Property shall be prorated as of the close of escrow based upon the latest available tax bill. The escrow fee shall be divided equally between the parties. Seller shall be responsible for the excise tax due on the sale. Seller shall pay for the title insurance policy as specified hereinabove. Other fees and

charges shall be allocated in accordance with the customary practice of the county in which the Subject Property is located.

13. Notices. All notices pertaining to this Agreement shall be in writing and delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. Except as provided for specifically elsewhere in this Agreement, all notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or, if delivered by hand, courier service or Express Mail, shall be deemed given when delivered; or, if transmitted by facsimile, shall be deemed given when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

14. Legal Costs. If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

15. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will indemnify and hold the other party harmless from said claim.

16. Time of the Essence. Time is of the essence of this Agreement.

17. Binding on Successors. This Agreement shall be binding not only upon the parties but also upon their respective heirs, personal representatives, assigns, and other successors in interest.

18. Additional Documents. Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

19. Modification. No supplement, modification, or amendment of this Agreement shall be binding and no waiver of any provision in this Agreement effective, unless executed in writing by all the parties.

20. Assignment of Buyer's Interest. The parties hereto agree that the Buyer may assign its interest in this Agreement to an organization or entity that is a qualified organization at the time of transfer under Section 170(h) of the Code, and the applicable regulations promulgated thereunder. Buyer shall not assign its interest in this Agreement to any for-profit entity or organization without Seller's prior written consent.



21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

22. Counterparts and Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement. Signatures required under this Agreement may be transmitted by facsimile and, once received by the party to the Agreement to whom such signatures were transmitted, shall be binding on the party transmitting its signatures as though they were an original signature of such party.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

BUYER:

THE CITY OF BAINBRIDGE ISLAND, a  
political subdivision of the State of Washington

By: Evelene R. Rasmussen

Title: Mayor

Date: June 2, 2003

SELLER:

THE TRUST FOR PUBLIC LAND, a  
California nonprofit public benefit corporation

By: Thomas S. Lynen

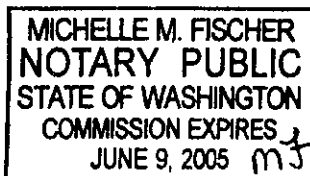
Title: REGIONAL COUNSEL

Date: JUNE 4, 2003

# ACKNOWLEDGMENTS

STATE OF )  
 ) ss.  
COUNTY OF )

On this 2nd day of June, 2003, before me, the undersigned notary for the State of Washington, personally appeared Darlene Kordalowsky, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Mayor on behalf of the City named therein, and acknowledged to me that the She executed said instrument as its free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated to me that (s)he was authorized to so execute said instrument.



Michelle M. Fischer  
Print Name: Michelle M. Fischer  
NOTARY PUBLIC in and for the State of  
WA, residing at Silverdale  
My appointment expires: June 9, 2005

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 4th day of June, 2003, before me, Daniel K. Wilson, the undersigned Notary Public in and for the state of Washington, personally appeared Thomas E. Lyner, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Regional Counsel, on behalf of The Trust for Public Land, the corporation therein named and acknowledged to me that the corporation executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he was authorized to so execute said instrument.



Daniel K. Wilson  
Print Name: DANIEL K. WILSON  
NOTARY PUBLIC in and for the State of  
Washington, residing at Seattle  
My appointment expires: 02/04/06

# DUPLICATE ORIGINAL

## FIRST AMENDMENT TO OPTION AGREEMENT

This First Amendment to Option Agreement, dated June 23, 2005, is made between THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, a municipal corporation ("Buyer"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Seller").

### RECITALS

I. Seller and Buyer have previously entered into an Option Agreement dated as of May 14, 2003, (the "Agreement"), with regard to certain real property on Bainbridge Island in Kitsap County, Washington, as legally described on "**Exhibit A**" to the Agreement, which Exhibit A is incorporated herein by this reference.

II. Seller and Buyer desire to enter into this First Amendment to amend the Agreement in certain respects, and to continue all other terms and conditions in full force and effect.

### AGREEMENT

In consideration of the mutual promises, covenants, and conditions set forth herein, and other valuable consideration, the parties hereby agree as follows:

**A. Terminology.** The terms used in this Amendment shall have the same meanings as in the Agreement, unless a different meaning is required by the context hereof.

**B. Section 2.2 of the Agreement:** The second full paragraph of Section 2.2 of the Agreement is deleted in its entirety, and the following new second full paragraph of Section 2.2 is inserted in its place:

Buyer has exercised its Option and completed its purchase of that portion of the Subject Property identified as Block A and Block C-1 on the map attached hereto as **Exhibit C** and hereby incorporated by this reference. Provided that Buyer exercises its Option with respect to at least Parcel C-2 of the Subject Property (as shown on Exhibit C), on or before the expiration of the First Extended Option Term, then Buyer, at Buyer's option, may extend this Option as to the remainder of the Subject Property (consisting of Block B) through December 15, 2005 by notifying Seller in writing of Buyer's election to extend the First Extended Option term as to the remainder of the Subject Property, such notice to be received by Buyer on or before June 29, 2005. Upon Seller's receipt of such notice from Buyer, the Option Term shall be extended through December 15, 2005 (the "Second Extended Option Term"), provided, however, that Buyer shall pay Option consideration to Seller in the sum of Fifteen Thousand Dollars (\$15,000.00) on or before

September 30, 2005 if Buyer wishes to have the Option on Block B extend through the end of the Second Extended Option Term. Such Option consideration shall be applied toward the purchase price of the Block B if Buyer exercises the Option as to Block B, but shall otherwise be nonrefundable. If Buyer exercises the Option as to Block B, then closing on the purchase of Block B shall occur on or before January 31, 2006.

If Buyer exercises the Option as to Block C-2 as set forth herein, then the purchase price for Block C-2 shall be \$650,000.00, and closing on the purchase of Block C-2 shall occur as soon as reasonably possible following exercise but in no event later than October 31, 2005. To the extent that a boundary line adjustment or other subdivision is required to accomplish the purchase and sale of Block C-2 as contemplated herein, Seller agrees to promptly submit an application for such adjustment/subdivision and the parties agree to reasonably cooperate with each other in obtaining approval for such adjustment/subdivision from any governmental agency with jurisdiction over said application. The parties shall share equally in the costs of such application process; provided, that neither party shall claim any reimbursement for administrative acts performed by that party in pursuit of any agency approval which may be required.

**C. Entire Agreement; No Other Modifications to Agreement.** This First Amendment sets forth the entire agreement of the parties with respect to the amendment of the Agreement and supersedes and shall control over any inconsistent provisions of the Agreement, any previous extensions or other amendments of the Agreement, and any other prior written or oral agreements relating to the subject matter hereof. Except as specifically set forth herein, all of the terms of the Agreement shall continue in effect without modification or waiver. Any further modifications to the Agreement must be in writing and signed by both Seller and Buyer.

**D. Counterparts.** This First Amendment may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

EXECUTED as of the date first set forth above.

**THE TRUST FOR PUBLIC LAND,**  
a California non profit public benefit corporation

By : James E. Lynn

Title: REGIONAL COUNSEL

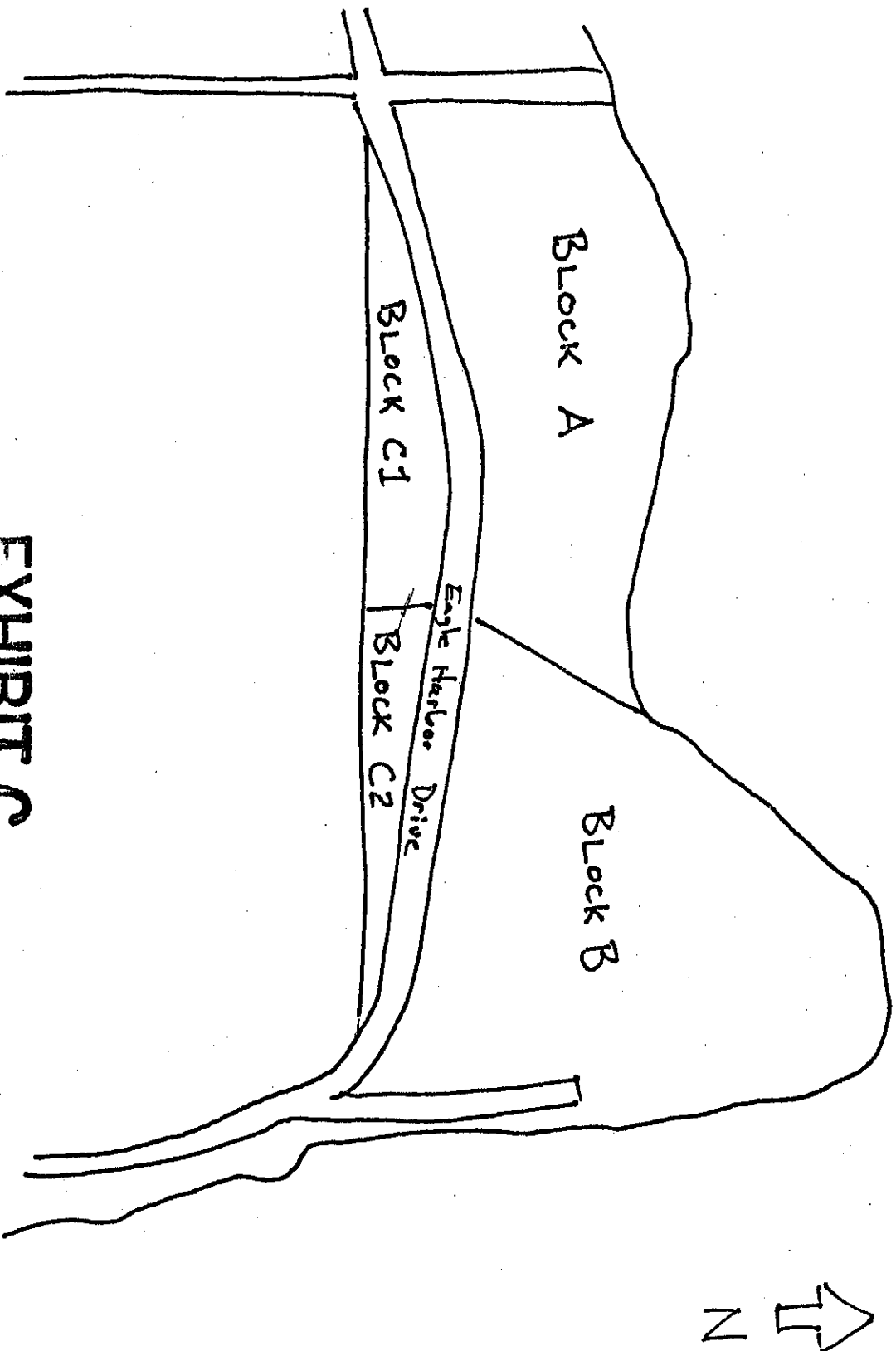
Date: JUNE 23, 2005

**THE CITY OF BAINBRIDGE ISLAND,**  
a political subdivision of the State of Washington

By: Paulina Kordman

Title: Mayor

Date: June 27, 2005



**EXHIBIT C**

## SECOND AMENDMENT TO OPTION AGREEMENT

This Second Amendment to Option Agreement is made between THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, a municipal corporation ("Buyer"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Seller"). This instrument amends that Option Agreement for land in Kitsap County first entered into by the Buyer and Seller on May 14, 2003, and as that instrument has been subsequently amended.

**Exercise.** Add to the section:

If Buyer exercises this option as to Block B, then Buyer's obligation to close shall be conditioned upon:

Buyer's City Council approval by January 25, 2006, of the terms and conditions of an Agreed Order with the Department of Ecology concerning the environmental condition of the property and Buyer's readiness to close. Buyer to inform Seller in writing as to the satisfaction of this condition no later than close of business on January 26, 2006.

**Closing:** If Buyer exercises this option on Block B then Buyer shall close by February 28, 2006, subject to the condition of exercise stated herein.

**Entire Agreement.** This Amendment sets forth the entire agreement of the parties with respect to the amendment of the Agreement and supersedes and shall control over any inconsistent provisions of the Agreement, any previous extensions or other amendments of the Agreement, and any other prior written or oral agreements relating to the subject matter hereof. Except as specifically set forth herein, all of the terms of the Agreement shall continue in effect without modification or waiver. Any further modifications to the Agreement must be in writing and signed by both Seller and Buyer.

**Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and, when taken together, shall constitute a fully executed Agreement.

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EXECUTED as of the date of the date last made below.

**THE TRUST FOR PUBLIC LAND,**

a California non-profit public benefit corporation

By: 

Title: Noel Rog Counsel

Date: 12. 12. 05

**THE CITY OF BAINBRIDGE ISLAND,**

A political subdivision of the State of Washington

By: 

Title: Mayor

Date: December 15, 2005



## **Exhibit B**

### **Site Diagram and Legal Description**

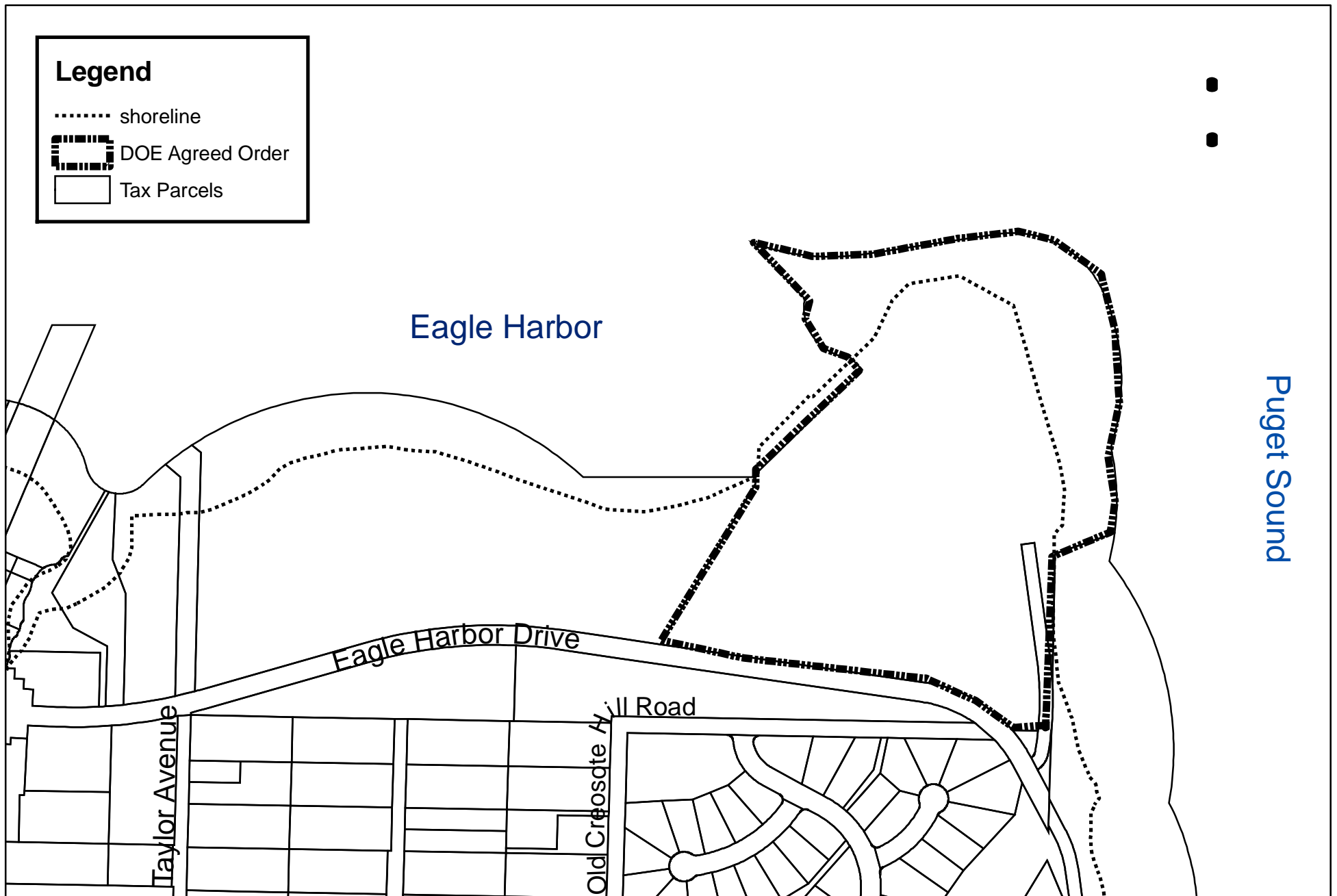


Exhibit B:  
Site Diagram of Ecology Agreed Order

0 100 200 400 600 800  
Feet

**EXHIBIT B**  
**Site Legal Description**

Government Lot 4, Section 35, Township 25 North, Range 2 East, Willamette Meridian;

**EXCEPT** that portion conveyed to The City of Bainbridge Island and the Bainbridge Island Park and Recreation District by Bargain and Sale Deed recorded under Kitsap County Auditor's file number 200412170364;

**AND EXCEPT** that portion conveyed to The City of Bainbridge Island and The Bainbridge Island Metropolitan Park and Recreation District by Bargain and Sale Deed recorded under Kitsap County Auditor's file number 200510280449;

**TOGETHER WITH** tidelands of the Second Class to the line of extreme low tide, as conveyed by the State of Washington, situate in front of, adjacent to and abutting thereon.

**SITUATE: City of Bainbridge Island, Kitsap County, Washington.**

## **Exhibit C**

### **Wyckoff/PSR – Bainbridge Island Prospective Purchaser Agreement**

## **Exhibit D**

**Ecology Letter to City of Bainbridge Island, August 2, 2002**



RECEIVED

AUG 9 7 2002

EXECUTIVE

CORR LOG

22846

Mayor Kordonow  
L. Nordby  
S. Warren  
L. Hudson  
Vault

STATE OF WASHINGTON

## DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600  
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

August 2, 2002

The Honorable Darlene Kordonowy, Mayor  
City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, WA 98110-1812.

RE: Proposed Wyckoff-Nikkei WWII Memorial Site

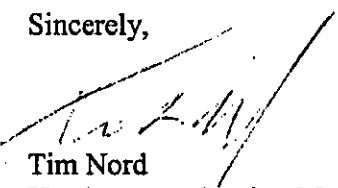
Dear Mayor Kordonowy:

I was recently briefed by Libby Hudson of your staff on the City of Bainbridge Island's proposal to turn the Wyckoff Superfund site into a public park. This briefing included a request that the Department of Ecology outline the state's obligations under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), commonly referred to as Superfund.

Under CERCLA and its implementing regulation, the National Oil and Hazardous Substances Pollution Contingency Plan, the State of Washington is required to pay for 10% of the remedial action costs and 100% of the operation and maintenance costs at sites in which parties responsible for the pollution are unable to pay for the cleanup. Such is the case at the Wyckoff site. The State of Washington fully intends to fulfill its statutory obligation at the Wyckoff site.

I support and wish you success in your efforts on the park. Should you or your staff need additional information, please feel free to contact me at (360) 407-7226.

Sincerely,

  
Tim Nord  
Headquarters Section Manager  
Toxics Cleanup Program

TN:cp

cc: ← Steve Thiele, AAG ←  
Hanh Gold, EPA

## **Exhibit E**

### **Park Vision and Design Framework**

## **Exhibit E – Pritchard Park/ Japanese American Memorial Bainbridge Island, Washington**

### **Park Vision and Design Framework**

#### ***Park Vision***

This is a 50-acre waterfront park where kayakers, bicyclists, and families will stand in the midst of a natural setting, surrounded on three sides by nearly a mile of beach. The waters at their feet, once fouled by oil and creosote, will provide a home for native shorebirds and Puget Sound fish, including juvenile salmon. The harbor before them will bustle with daily boating activity, and the forest behind them will provide wildlife habitat and may one day be a fine representation of the magnificent forests that once lined the shores of Puget Sound.

Throughout the park's meandering trails, visitors will be able to partake in a varied menu of recreational opportunities and also learn of the natural and human history that infuses the site. In gathering spaces and interpretive areas, visitors will learn of Native American activities that once occurred here, and about the economic and environmental impacts of the industry that once dominated the property. Visitors will gain an appreciation of our nation's great commitment to cleaning and restoring the earth and learning from our past mistakes.

On the westernmost portion of the property, another reminder of our past and our commitment to the future will stand amid the forest. At the former Eagledale ferry dock, along Taylor Avenue, hundreds of Japanese Americans departed Bainbridge Island for internment camps on March 30, 1942. They were the first of over 100,000 people of Japanese descent to be evacuated from their homes under presidential order during World War II, and their experience and that of the community will be acknowledged and honored through a nationally significant memorial that gently urges us to "let it not happen again."

There are many beautiful parks that provide opportunities for recreation, or preservation of natural habitat, or memorials that help us remember and learn from the past. Not many parks are all these things at once, which is the vision of Pritchard Park and the Japanese American Memorial, *Nidoto Nai Yoni* (Let it not Happen Again).

As envisioned, the park experience will focus on the site: the views, the wildlife, the forest and waterfront environment, the history, and the recreational opportunities. The park will offer active and passive waterfront recreation and will showcase design strategies that promote a sustainable environment. The park will re-establish ecological patterns within the landscape, setting the stage for public awareness of natural systems, while also incorporating information and education of the site history and environmental remediation.



## ***Design Concept Framework***

### ***Overall Framework***

Realizing the Park vision will require certain components based on the Park vision; local and regional needs; funding opportunities; and cultural, environmental and economic opportunities.

Two major thematic areas make up the Park concept:

- The eastern end of the site will focus on the remediation and ecology of the land, with the theme, “Restoration of Nature”
- The western end will focus on the “recognition of human dignity” with a memorial to the Japanese Americans of Bainbridge Island who were interned by our government during World War II, with the theme “Let it not happen again”, or “*Nidoto Nai Yoni*”

The park design will highlight the federally funded Superfund restoration results, and draw on the recreational opportunities and rich ecology and history of the site to create a series of connected landscapes that tell the story of the land, culture and history. The park design will maximize the site’s commanding views of the surrounding land and waterscape, while integrating infrastructure features, and cultural and ecological interpretation as the site is further remediated. Site planning and construction methods will be utilized that respond to the opportunities and amenities of the site and will be consistent with any special constraints related to the remediation of this former industrial property as outlined in the elements of the Pritchard Park Remediation and Redevelopment Plan (PPRR Plan, as specified in the Ecology Agreed Order), including: a. Cover and Capping Sub Plan; b. Excavation Management Sub Plan; c. Worker Health and Safety Sub Plan; d. Park Management, Park Upkeep and Compliance Monitoring Sub Plan; e. Best Management Practices Sub Plan; and f. Institutional Controls Sub Plan.

Following are the primary components of the park design framework:

- A. Site Interpretation
  - 1. Memorial
  - 2. Restoration/ remediation and ecological/ cultural
- B. Remediation
- C. Recreation
- D. Connections
- E. Infrastructure
- F. Site Planning and Construction Methods

### ***A. Site Interpretation***

The Park and Memorial will be designed with a focus on interpretation of the historical, cultural, ecological, and remediation aspects of the property. The two major themes of the Park will also have two main focuses. The Memorial, located at the west end of the site, will emphasize cultural and historic events that took place there, with a focus on educating and understanding past governmental actions and the cultural implications of these actions. The east end of the Park will focus on the innovative industrial technology of the past, the contamination of the land and water, and the governmental actions taken to restore the contaminated property and bring it back to safe, active use for people and

wildlife. Both thematic areas will provide facilities for cultural and historical interpretation. The Bainbridge Island Historical Society and Suquamish Tribe should be involved in the development of the site's historical and cultural interpretation.

1. Memorial

The Bainbridge Island Nikkei World War II Exclusion Memorial, *Nidoto Nai Yoni*, defines the western portion of the site. The vision of the Memorial is to honor the 227 Bainbridge Island internees through an evocative and contemplative design which informs visitors of historic injustices and the fragility of assumed rights. The Memorial design is being developed by the Bainbridge Island Japanese American Community (BIJAC), while development of the Memorial is being coordinated jointly with BIJAC, the City and the Park District.

The Memorial will be established as the first public re-use of the site through the development of a memorial walk with site interpretation, wetland and wetland interpretation, contemplative gardens, visitor center, interpretive pier, and support parking. Parking for beach access to Pritchard Park is also being provided. The Phase I design for the Memorial portion of the Park has been processed through the City permitting procedures. Future Memorial design and development will be coordinated and linked with the eastern portions of the Park.

2. Restoration, Ecology and Culture

The Park design will highlight the remediation efforts of the former Wyckoff Company, Environmental Protection Agency (EPA) and Washington State Department of Ecology (Ecology). Park design and interpretation will tell the story of how this former industrial site became contaminated, how the community worked to address the environmental contamination, and how the property is being restored. The design will also mark the past cultural use of the area, and showcase the cultural aspects in conjunction with the ecological features of the site.

The design will emphasize the ecological aspects of the Park by:

- Establishing educational and interpretive programs to observe, explain and interpret the remediation of the site
- Providing interpretive facilities that can be utilized now and after the final clean up remedy is completed
- Preserving fish and wildlife habitat, native woodlands, and significant ornamental plant specimens, while also allowing for park use
- Protecting the habitat beach and the intertidal/woodland transition zone while providing waterfront access and maintaining habitat protection buffers along the shoreline
- Highlighting and enhancing significant cultural areas and providing for ecological site development, such as a learning center, an arboretum, or native vegetation demonstration garden
- Controlling invasive plants, protecting native species, and providing new planting and landscaping that enhances restored areas, reestablishing a small piece of the native forest that once inhabited these shores

- Capitalizing on opportunities for the development of unique places to experience the site, such as the forest knoll, the topographic high point in this area of the site
- Emphasizing and enhancing the commanding site views that exist on the property
- Portraying the cultural use of the site, including use by indigenous people, industrial technologies of the past, and site connections to regional and national events
- Involving the Historical Society and Suquamish Tribe in highlighting the cultural aspects of the site

**B. Remediation**

Because some of the Park property (the Point) will continue to undergo remediation, it is necessary that the Park design respond to any constraints necessitated from the remediation. The park will be designed to ensure the construction and use are not in conflict with the EPA Remedy. This will be coordinated with the final remediation plans to ensure the integrity of the EPA Remedy is maintained, and the work will be closely coordinated with the EPA and Ecology through site planning and construction design, consistent with the Pritchard Park Remediation and Redevelopment Plan (PPRR Plan) and the work Schedule referenced in the Ecology Agreed Order. The PPRR Plan ensures protection of human health and the environment during development of the park and ensures that the park design is not in conflict with the EPA Remedy and includes the following elements that need to be addressed in any park development activity of the final phase property purchase:

- Cover and Capping Sub Plan
- Excavation Management Sub Plan
- Worker Health and Safety Sub Plan
- Park Management, Park Upkeep and Compliance Monitoring Sub Plan
- Best Management Practices Sub Plan
- Institutional Controls Sub Plan

Site access for the on-going remediation will be needed. Restricting public access to certain areas of the site is necessary in accordance with the City's agreement with EPA. This agreement, the Prospective Purchaser Agreement, and any institutional controls that EPA requires as part of the final remedy must be considered in the design, including:

- Land use restrictions and other limitations that EPA requires
- Restriction on anchoring in Eagle Harbor, in the vicinity of the protective harbor cap
- Adherence to the protection measures for the habitat beach that is located along much of the shore west of the Point
- A requirement that activities and development must not adversely impact any of the remedy installations
- Sharing the Park development plans with EPA
- A requirement that no new wells will be allowed
- Coordination of design and site use to minimize conflicts with the requirements of on-going remediation operation and maintenance

*C. Recreation*

The Park is planned for a variety of regional recreational uses. However, the main recreational focus of the Park (and a grant funding requirement), is to serve a regional need for active waterfront recreation. Considering its location at the southern entrance to Eagle Harbor, and the fact that the site has nearly a mile of waterfront, it is important that public access for active water recreation be provided. Enjoying the dramatic views and forested shoreline environment are also fundamental components to the recreational aspects of the Park.

Key components that will enhance the recreational opportunities of the property include:

- Public beach access
- Regional recreational opportunities and park facilities for waterfront recreational programs such as car-top boat launch and related facilities
- Water access and water recreation components primarily for non-motorized boat access
- Opportunity for a future public dock or pier
- Community gathering spaces that includes picnic areas and fire circles
- Children's play areas

*D. Connections*

Because the Park will showcase the multiple aspects of the property, the design must be integrated and connect the various unique landscapes that embody the site. The park should connect to Winslow and Eagle Harbor, which are the cultural, community and commercial core of Bainbridge Island. The Park must also be connected to the local community and adjacent neighborhoods. Park connections include:

- Connecting the Park to Waterfront Park and the Washington State Ferry Terminal.
- Promoting an inner harbor ferry system as a private venture capitalizing on existing infrastructure
- Including the Park in the Washington Water Trails System within the Puget Sound
- Extending the waterfront trail to the Park (pedestrian access)
- Connecting the Park to the Harbor's past by promoting and celebrating the cultural history associated with this site and other related sites within the harbor.
- Involving the Historical Society and Suquamish Tribe in site interpretation and connections to other cultural sites.
- Providing safe bicycling and walking access to the Park
- Providing for vehicle access and bus access to the Park
- Building upon the implemented habitat beach and work with adjacent private property owners to establish almost a mile of accessible shoreline and intertidal habitat
- Connecting to the adjacent neighborhoods and a community trail system as part of the Non-Motorized Transportation Plan
- Establishing Eagle Harbor Drive as a parkway through the Park

*E. Infrastructure*

The Park design will require the extension of existing services or the development of new services.

Necessary services will include providing:

- Water, sewage, storm drainage and electricity for site facilities
- On-site septic systems until such time as the area is served with public sewer
- An electrical power metering system for the Park, separate from the existing on-site power provided for remediation activities
- Security lighting (extensive site lighting is not anticipated)

Access, vehicular circulation and pedestrian circulation are important infrastructure components to consider in the design. Vehicular infrastructure design considerations include:

- Providing vehicle access to the Park via two public roads -- Eagle Harbor Drive and Creosote Place. Primary access to the Park will be off of Eagle Harbor Drive, west of Creosote Place, and primary access to the Memorial and beach access (car-top boat launch) is from Eagle Harbor Drive, east of Taylor Avenue.
- Creating a safe park entrance experience that announces the Park and balances the concerns and needs of the adjoining neighborhood
- Providing parking, access and facilities adjacent to the Point
- Creating a safe, functional and unique site circulation scheme utilizing abandoned roadways

Pedestrian circulation will be integrated into all areas of the Park through a series of trails for exploration, interpretation, recreation and viewing opportunities. This could include constructing a footbridge across the ravine.

#### *F. Site Planning and Construction Methods*

Structures, roadways, parking areas, and landscaping will be located in conjunction with the final remedy plan to insure that Park development will maintain the protective level provided by the EPA Remedy. Site grading will be consistent with the final remedy of the site, EPA restrictions or institutional controls, and any design requirements of the Ecology Agreed Order.

Grading, excavation, and construction will be conducted in accordance with the Ecology Agreed Order through the approved Cover and Capping Sub Plan, Excavation Management Sub Plan, Worker Health and Safety Sub Plan, Best Management Practices Sub Plan, and the Institutional Controls Sub Plan.

Construction methods will be consistent with the final remedy of the site. Structures will be built using standard wood, timber, or peeled log construction on simple concrete spread footings. The footing depth and design will ultimately depend on the constraints posed by the EPA Remedy and on the stability of the soil fill. Roof and paving coverage areas and other impervious surfaces will be built to maintain the EPA Remedy. Roofs may also be constructed using “green roof” construction which can enhance the stormwater management methods used on the site.

### **Park Concept Areas**

The park development zones outlined below are identified on the attached map. The park is divided into five upland zones and four different beach zones. Each of these defined

areas offer different opportunities and require design consideration based on site constraints. In addition, the property was purchased in three phases as outlined on the attached map. Development of properties in all three phases must comply with the terms and conditions of the EPA Prospective Purchaser Agreement and any EPA Institutional Controls, while development of property acquired in the final phase is also subject to requirements in the Ecology Agreed Order.

### **Upland Areas:**

#### **Japanese American Memorial and West Hillside, Ravine, East Hillside, Flatlands, and the Point**

##### *A. Japanese American Memorial and West Hillside- First phase property purchase*

*Existing Features:* This area includes the Taylor Avenue Road End, which is the historic site of the old Eagledale Ferry Dock.

*Design Approach and Considerations:* The evocative and contemplative Memorial will honor the 227 Bainbridge Island internees and focus on their stories, reflecting on the historic constitutional injustices and reinstatement of rights, with the theme of “let it not happen again” (*Nidoto Nai Yoni*). Site design and interpretation will tell these stories in the context of Island life and the times of war, connecting local, national and world issues to the events at this site, and telling how these events remain relevant in current times.

##### *Anticipated Design Elements:*

- Memorial walk, sculpture and two entry/exit gates - interpretation of the events that lead to the forced evacuation of the Bainbridge Island Japanese Americans, the life left behind and personal experiences
- Pier and additional interpretation to represent leaving the Island
- Wetland boardwalk with wetland interpretation
- Contemplative Japanese-style garden
- Interpretive center, meeting space, restrooms, and information kiosk

##### *B. Ravine - Forested Uplands – First phase property purchase*

*Existing Features:* This area incorporates a steep ravine with an intermittent stream and the forested hillside fronting Eagle Harbor Drive. This area offers great views through an existing mature greenbelt.

*Design Approach and Considerations:* The primary focus for this area is to 1) retain the existing forest habitat, 2) develop trails that reveal the natural environmental amenities of the area, and 3) connect to other areas of the Park. This area also acts as a buffer between the contemplative Memorial to the west, and the more active park to the east.

##### *Anticipated Design Elements:*

- Maintain the greenbelt view of the site from the Ferry
- Trails that take advantage of the natural forested environment and offer viewpoints at rest areas along the way
- Footbridge across ravine
- Native plant and forested ravine interpretation

- Indoor/outdoor gathering areas

*C. East Hillside- Second and final phase property purchase*

*Existing Features:* This area is the historic site of the company town known as Creosote, which included worker homes and company buildings and was the first electrified area on the Island. Although all the buildings have been removed, some of the gardens and ornamental plants remain. This area slopes to the north and east and offers views across of Eagle Harbor, Wing Point and the Puget Sound to the north and across the Puget Sound to Seattle and Mt. Rainier to the east and southeast.

*Design Approach and Considerations:* This area of the Park will focus on the site history and restoration story, and will provide for an interface of activities, such as interpretive and recreational facilities, parking, picnic and gathering spaces, environmental clean up interpretation, and play areas. The Park design will take advantage of the views and topography, utilizing them to provide park amenities that blend in with the landscape. As the historical location of the company town development, this area is suitable for the more intensely developed Park functions, such as visitor areas, parking and restroom facilities. Site interpretation will include both recreational and educational features that will be interwoven into the park design. Design of parking lots and other facilities will be integrated into the landscape and screened with trees and native vegetation. The main entrance to the park will be in this area, near Creosote Place.

*Anticipated Design Elements:*

- Main vehicular entrance
- Cultural, historical and ecological interpretative center
- Native American interpretation
- Trails
- Parking
- Play areas for kids
- Indoor/outdoor gathering area
- Restrooms
- Signage

*D. Flatlands- First and final phase property purchase*

*Existing Features:* This portion of the site is located at the base of the East Hillside, but is not intended to include the area fenced off for further remediation. Most of the area is not vegetated. As the name indicates, this area is level and connects to the Point, the Ravine and the East Hillside.

*Design Approach and Considerations:* This zone acts as a connector between the other park areas. The level nature of the area lends itself well to recreational park features and functions that require a level surface, such as beach access for all ages and those with disabilities, play areas, sports courts, or parking lots. It is the most suitable area for many of the anticipated park development features, and is the best location for viewing the on-going remediation activities of the Point.

*Anticipated Design Elements:*

- Gathering areas, picnic shelters, fire circles

- Play areas, sports courts
- Trails
- Restrooms
- Interpretative buildings/structures/visitor center and observation area
- Parking lots, roadway, utilities

*E. The Point – Final phase property purchase*

*Existing Features:* The Point offers the most expansive views for the park user, with an almost 360-degree viewpoint. It is also the chief focus area of the Superfund clean up and contains several buildings and a parking area associated with the on-going clean up operations. The final remedy for the Superfund site will shape the design of this portion of the site. A steel sheetpile wall, protruding above ground level at various heights currently surrounds the shoreline boundaries of the site and will likely remain after the final remedy is selected.

*Design Approach and Considerations:*

*General Design Approach:* Site design will emphasize the phenomenal view aspects of the Point and reflect the historical and environmental impacts by acknowledging the Superfund legacy and human endeavor involved in restoring the site. The park design will provide a balance of elements in a context that incorporates natural habitat functions with manmade restoration, providing for human interaction with the landscape.

Enhancement of the final remedy features will be incorporated with the design for this area. Other design considerations related to the final remedy and operation and maintenance will be required in the future. Because much is unknown about how this area of the property will function until the final remedy is selected and in place, the design considerations have been divided into “general” and more “specific” based on different site issues for the Point.

*General Design Considerations:*

- The Environmental Protection Agency and Department of Ecology must be provided with access to complete the site remedy clean up and any required operation and maintenance of the final remedy
- The steel sheetpile wall surrounding much of the Point will remain in place as a necessary component of the remedy
- Public access must be restricted to the East Beach

*Specific Design Approaches and Design Considerations for the Point:*

- Topography

*Approach:* Provide ground surface undulation to incorporate interest and function into the landscape.

*Considerations:* The surface of this area needs articulation to add interest to the landscape. Topography changes could include berming or other surface grading alteration, such as ha-ha's. These surface treatments can serve multiple functions such as stormwater drainage control, focusing visitor attention to key viewpoints, providing additional screening of remedy features or separating activity areas. As part of the berming or grading, added features could include fabric markers or a layer of quarry spalls that will provide a protective feature to the remedy.



- Trails

*Approach:* Pathways and trails are important links, providing a park experience that enhances connectivity to viewpoints, interpretative sites, and other park amenities.

*Considerations:* Trails may be constructed using a variety of surface materials, including gravel, asphalt, structural grass containment and wooden boardwalks, and can provide vehicle access for monitoring, or other necessary remedy-related activity.

- Interpretation

*Approach:* Provide interpretive sites and special nodes of interest that inform, educate and enhance the visitor's experience through the park.

*Considerations:* These interpretative sites will focus on the clean up remedy, history, and environment of the site. Interpretive sites can range from simple placards to larger interactive features.

- Picnic Areas

*Approach:* Strategically place picnic shelters to allow enjoyment of views, while not blocking important views for other park users.

*Considerations:* Location will be in close proximity to parking areas to facilitate public use. Secondary or smaller picnic areas may be placed at more remote locations.

- Resting Amenities

*Approach:* Place benches and gathering spaces to provide public enjoyment and resting points.

*Considerations:* Distribute these across the site or group in conjunction with interpretive areas, amenities, or along pathways.

*Anticipated Design Elements:*

- Public access opportunities
- Site Interpretation - cultural, historical and environmental restoration
- Maintain 360° views
- Berms and ground undulation and landscaping that enhance site views
- Cultural gathering areas
- View points
- Promenade suitable for multi-age (walking, jogging) with access to shoreline

**Beach Areas: Water Access Beach, Habitat Beach, West Beach, and East Beach**

Each of the four beach areas provide water views and most provide direct water access. All four of these beach areas are located along the south shore of Eagle Harbor and border on a no-anchor zone established by the United States Coast Guard (USCG) at the request of the Environmental Protection Agency. The no-anchor zone is a protection measure for the in-water sediment cap that EPA placed on the floor of Eagle Harbor. Any development proposed within the water outside of the location of the sediment cap, but within the no-anchor zone, must first receive a special waiver from the USCG.

*A. Water Access Beach- First phase property purchase*

*Existing Features:* Most of this beach is in a natural state with mature vegetation lining the low bank shoreline. Some of the beach includes a documented surf smelt spawning area.

*Design Approach and Considerations:* This beach is the primary water access for the western portion of the site and is intended to provide public access for human powered boats.

*Anticipated Design Elements:*

- Memorial pier, just west of the beach
- Future public dock location, outside sediment cap located in harbor
- Car-top boat launch area for public

*B. Habitat Beach- First phase property purchase*

*Existing Features:* This beach is the newly created and/or restored habitat beach intended by the Environmental Protection Agency as mitigation for the nearshore impact of the sheetpile wall. It includes a constructed sandy beach and a vegetated buffer that was installed along the upland edge of the habitat beach. The beach and vegetated buffer provide essential habitat for fish and shoreline wildlife for feeding, breeding, rearing and cover from predators.

*Design Approach and Considerations:* The primary intent for this area is to maintain the habitat beach for wildlife, while allowing appropriate passive, human use along the beach. Protection of the habitat beach and vegetated buffer is paramount. The vegetation buffer must be maintained, while also providing for trails and pathways to the beach through the buffer. Enhancement of the vegetation buffer is anticipated. Picnicking, viewing and resting areas will only be allowed above the vegetative buffer area.

*Anticipated Design Elements:*

- Trails
- Vegetation enhancement, possibly including a shoreline native vegetation demonstration area
- Picnic areas
- Benches

*C. West Beach – Final phase property purchase*

*Existing Features:* This sandy beach includes part of the sedimentation cap that extends from the harbor floor to the upland sheetpile wall.

*Design Approach and Considerations:* The beach area is intended for passive shore access.

*Anticipated Design Elements:*

None

*D. East Beach- Final phase property purchase*

*Existing Features:* This beach extends around the Point to the south and is sandy along the inner harbor area, but consists primarily of cobbled material along the east side of the

Point. The eastern portion of this beach is still experiencing seeps of contamination offshore and EPA is restricting public access to this entire beach area.

*Design Approach and Considerations:* The park design needs to incorporate elements that restrict public access to this beach. Signs and markers will be important, but also some type of environmental interpretation that will explain the natural forces along the eastern shore and why contamination remains in this area.

*Anticipated Design Elements:*

- Signage
- Interpretative markers
- Barriers that incorporate art and site interpretation

*Attachments:*

- A. Map- Park Development Zones
- B. Park Development Zone Designation Table
- C. Park Preliminary Site Project Profile
- D. Pritchard Park Design Timeline and Milestones

## **Exhibit F**

### **Schedule for Work**

## EXHIBIT F

### Schedule for Work

Task	Schedule
Submit Draft Phase I Pritchard Park Remediation and Redevelopment Plan (PPRRP) to Ecology—Hillside, Flatlands and West Beach Areas	Within 90 days of shoreline permit submittal
Submit Final Phase I PPRRP to Ecology	Following resolution of Ecology comments, and within 30 days after receipt of shoreline permit
Submit Draft Construction Drawings and Specifications	At time of construction permit submittal
Resolve Ecology Review Comments	Within 60 days of construction permit submittal
Submit Final Plans and Specifications	30 days after construction permit issuance
Submit Draft Phase II PPRRP to Ecology—The Former Process and East Beach Areas	Within 90 days of shoreline permit submittal
Submit Final Phase II PPRRP to Ecology	Following resolution of Ecology comments, and within 30 days after receipt of shoreline permit
Submit Draft Construction Drawings and Specifications	At time of construction permit submittal
Resolve Ecology Review Comments	Within 60 days of construction permit submittal
Submit Final Plans and Specifications	30 days after construction permit issuance

## **Exhibit G**

### **Required Permits**

## **EXHIBIT G**

### **Required Permits**

Necessary city of Bainbridge Island land use and construction permits required for park development:

- Shoreline Substantial Development Permit (SSDP)
- Site Plan Review
- Critical Areas Review
- Building Permit